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Right to education (articles 13 and 14 of the Covenant)

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The right to education in the context of cultural rights

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I. THE RIGHT TO EDUCATION IN THE CONTEXT OF CULTURAL RIGHTS

1. The work of the "Fribourg Group" on cultural rights resulted in a consolidated approach to eight rights or groups of rights in the human rights system. 1/ The reasons for the lack of knowledge about cultural rights have been analysed on a number of occasions. They include the importance and the central difficulty presented by such rights: since their common purpose is cultural identity, their respect ensures that all persons, either individually or collectively, are capable of being author and actor. They are therefore fundamental rights and unless they are observed no other human right can really be realized. They embody, in the strict sense, various aspects of human dignity, such as the freedom, independence and creativity of the individual. At the community level, they constitute the basis of any democratic society. And yet they are frequently regarded as being of secondary importance, particularly in the wealthy countries.

2. According to the commentary on the draft declaration drawn up by the "Fribourg Group", "Cultural identity is inherent in the beneficiary and belongs to him. Its non-observance constitutes a violation of the integrity of the human being and renders the effective exercise of other human rights impossible." (para. 9). Paragraph 8 of the same commentary states that cultural identity reveals three kinds of opposition, namely, those between the particular and the universal, the result and the process, and diversification and cohesion. This means that it cannot be understood in a unilateral particularist sense, since identity is also developed by reference to the universal (the ability to be a person), nor in a unilateral backward-looking sense, for it is at the same time a process, nor yet as an endless multiplication process, since it also needs unification. Identity is not a withdrawal but the face that persons, either individually or collectively recognize and present to others. Unless that face is recognized they lose all their freedoms.

3. The right to education clearly occupies pride of place among cultural rights, since it is the one by which respect for and the protection and development of the right to identity can be achieved. It renders respect for other cultural rights, as well as human rights in general, both possible and realistic. From the very standpoint of any form of individual and collective development, it is the best indicator of a development policy or programme.

II. CHARACTERISTICS OF THE RIGHT TO EDUCATION

4. The right to education, by its indivisibility, occupies a very special position. Not only is it an aspect of civil and social rationality, 2/ but as a cultural right it creates close links between all human rights. It is the instrument of all human rights. Since the beneficiary of this right, be it a child or adult, is in a position of inferiority in relation to knowledge (and in general in relation to other persons), interpretation of the right implies that account is taken of the close interdependence between respect for many heterogeneous factors: the dignity of partners in education and particularly of their potential, of communities, of cultural heritages in which dignity has been so to say "dumped", of the many dangers of the perversion of such heritages and of social and economic systems in which any cultural capital is transmitted.

5. It is both helpful and logical to analyse a human right by reference to the three elements constituting it as the relationship between a beneficiary (actor and not only beneficiary), its purpose and a body of suppliers.

A. By beneficiary

6. The beneficiary is first and foremost an individual, as in the case of all human rights, whereas the purpose possesses a particularly well-developed social dimension. The right to education is imbued through and through by a dialectic between autonomization and socialization (partial application of the first opposition constituting identity, i.e. individual/universal) in the sense that it should give rise to two opposing processes of equal importance, namely, the autonomization of the individual acquiring knowledge and learning to exercise his freedoms, and his socialization, or apprenticeship with a view to his integration in society. It would be wrong to say that the first dimension comes under the heading of civil rights whereas the second falls under social rights, since freedoms (to participate) are indispensable aspects of any socialization in a democratic society: the civil/social fissure cuts across freedoms. Some authors 3/ place more emphasis on one process than on the other, although the two aspects of this right are incomprehensible if taken individually, for they are both constituent parts of it. The socialization of the individual is democratic only insofar as it is achieved through his activity, recognizing rights, obligations and possibilities of creation. Otherwise, socialization is tantamount to reduction to a collective standard. The beneficiary of this right as it is realized - the educated person - is the creator of a social bond.

7. That is why the designation of the beneficiary used in the draft declaration as "any person individually or collectively", assumes a specific meaning, since the purpose of education is precisely to teach individuals to make use of their freedoms, individually or collectively, one by one, in fits and starts.

8. Any person in a situation calling for apprenticeship is entitled to this right. This means not only children, adolescents and young adults, but also individuals who need to acquire knowledge in order to cope with their social and professional responsibilities. The urgency of the matter is therefore not only a function of age but also the importance of the need. A person without the necessary knowledge to enjoy his freedoms and also - and possibly above all - to discharge his obligations is directly denied his dignity. One of the greatest humiliations is inability to give.

9. The beneficiary's position of inferiority means that this right is of a fundamental and priority nature for two reasons.

(a) His dignity is at once at stake, so that immediate action is necessary; the dignity and the future of the child and of the mother who does not know how to look after her child, of the worker who does not know how to adapt to changes, require an immediate response: the consequences are immediate and irremediable both for them and for their families;

(b) The violation of this personal dignity results in a waste of human resources; it is also unfair to generations in the immediate future since it has the effect of mortgaging, seriously and permanently, virtually all development processes.

B. By purpose

10. The purpose of the right is a potential 4/ as a result of which all social and political bonds can be created. This is why it is of fundamental importance to the development of the individual, as well as that of any community in a democratic context:

(i) the bond between the individual and communities;

(ii) the bond between communities: intercultural experience or the bond between individual cultures and their universal content;

(iii) the bond between individuals, communities and intellectual and physical heritages (natural and man-made);

(iv) the bond between generations; and

(v) the bond between functions in the body social.

11. Not only like most social rights but also like traditional freedoms, the right to education has a purpose in which an incompressible part (the "Wesenskern" of German tradition, or intangible nucleus) and a flexible part, can be distinguished, since education paves the way to infinite knowledge. The interface between these two is not clear-cut but can always be deduced by reference to the context; however this interface must be determined if binding legal obligations are to be enumerated, as should be done for any human right. 5/

12. As in the case of all human rights, the purpose cannot therefore be reduced to something isolated, to a unit of knowledge, since it is a relationship and more specifically a valid (pedagogical) relationship within which the beneficiary may be an actor-partner of his apprenticeship. That the purpose of this right may be of a "starlike" nature, since it has links in all directions, does not exclude the possibility and indeed necessity of determining its exact dimensions, which can be distinctly identified during implementation:

(a) Free access to systems of education and training (non-discrimination and freedom of choice, namely, rights by which this right was incorporated in the Protocol to the European Convention). 6/ The principal indicators of this purpose are genuine freedom of choice, including freedom to create institutions, and public or private assistance for education. A body of negative and positive obligations are identifiable;

(b) Minimum education (this is a threshold; in the absence of this minimum, the individual is unable to enjoy his basic freedoms). The main indicators are illiteracy rates and functional illiteracy rates, the

unemployment rate of unqualified persons, familiarity with principles of health and basic medical care, etc. The minimum programmes (indicators of results) are identifiable, adapted to the diversity of situations;

(c) Differentiated education (namely, respect for cultural and social differences by the promotion of adaptation and intercultural relations). The indicator of this purpose is the ratio between the number and size of different cultural communities and suitable training facilities, including apprenticeship and intercultural facilities, as well as the ratio between islands of poverty and suitable training facilities;

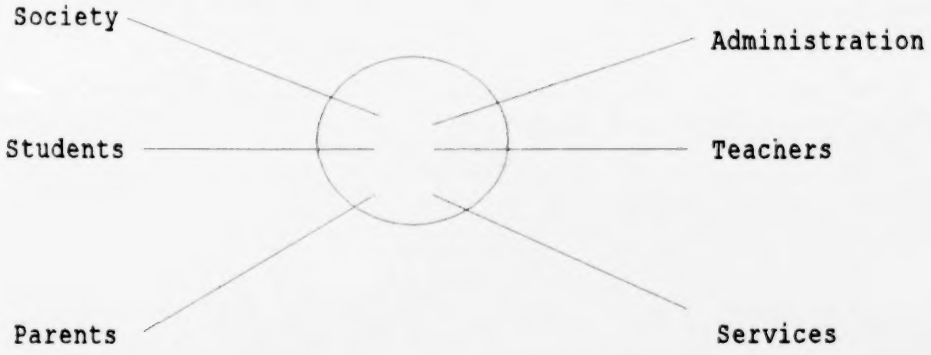
(d) Right to participate, or respect for the beneficiary as actor. The main indicator of this purpose is the effectiveness of participation in the educational community (school, district, enterprise, community - see section C below) as well as the effectiveness of the schooling provided and the enjoyment of human rights and democratic culture.

C. By suppliers

13. The four dimensions of the purpose indicated above apply directly to the individual, either personally or collectively and concern his right to valid pedagogical relations during his existence. What must also be added are conditions enabling him to achieve the desired results, since relationships do not exist in isolation but depend on the availability, continuing adaptation and relative excellence of educational systems. For this reason it is incorrect to focus solely on the responsibility of the State as the primary implementer of this right. The State ensures that educational systems function properly in accordance with the law in a democratic society, but interpretation and implementation on the basis of democratic procedures are the task of all.

14. This does not, however, mean that it is sufficient to mobilize a sufficiently large number of partners. Each actor has his own responsibilities that he must identify and adapt in the course of an ongoing democratic debate specific to each national community, but it must be borne in mind that some of those actors are invariably weak in this or that area, and that the others are unable to discharge fully responsibilities that have not been assumed.

15. The beneficiary is therefore the primary supplier or the one responsible for his own right from the moment that he has access to the necessary minimum for the exercise of such responsibility. More specifically, the interpretation and exercise of this right implies that the beneficiary should be an actor in a set of pedagogical relationships in which there are several partners. The school community can be used as an example:



Schematic diagram of school actors

If the school can be thought of as the "black box" of a system involving an essentially dual teachers/students relationship, organized and controlled by an administration, it can be inserted into a simple hierarchy and conceived of simply in terms of a programme to be carried out. However, if it is considered that the school community is governed not only by a programme (implementing regulations), but also by a law it has to interpret while respecting the hierarchy of norms (the initial provisions of the law being the key to the interpretation of the others, and all the more so of the regulations), then the need for a forum for discussion between the partner-actors, namely, a public forum, must be taken into account. The pedagogical relationship is valid only in the framework of a public forum and benefits from inputs at various levels (in the above diagram, certain of the lines constituting the circle of the school - the institution - and others penetrating the circle indicating that these actors also constitute its core by virtue of the web of their relationships). The involvement of these actors varies according to cultures, but the important point is that this community, administrated by a public forum should exist and be maintained as a fundamental dimension of the purpose of the right, under the heading of common responsibility.

16. Even the child, depending on his means, is therefore a supplier of his right; this is essential to his dignity. The reservations felt by certain persons in speaking of citizenship for a student, particularly during the initial grades of primary school, therefore become invalid if it is taken into account that:

(a) His citizenship is obviously exercised only to some extent, depending on his age and ability;

(b) The role of the school is to instruct him in means of socialization (apprenticeship for life in society) not by duress but by developing his potential for independence while accepting and mastering the rules of the democratic game and each discipline; consequently a school which fails to teach this kind of citizenship has no place in a democratic society;

(c) This implies the effective participation of various school actors and therefore an understanding on the part of each one of this inevitable complexity.

17. This observation is all the more valid when the beneficiary of the right is someone in a situation of extreme economic and cultural poverty or in danger of losing touch with his culture (immigrants, refugees, members of minorities and indigenous populations). The interpretation and exercise of their right to education imply recognition of their right freely to assume their responsibilities in respect of themselves, their families and their communities. The interpretation of duties in no way detracts from rights, but on the contrary improves understanding of them.

18. In the context of this common responsibility, various kinds of identifiable obligations in laws can be distinguished, depending on cultural specificities; they can also be observed through a system of indicators:

(a) Negative obligations (respect) for all suppliers:

- of the State towards individuals and institutions in society (associations, enterprises);

- of individuals and institutions (in respect of one another as well as the State);

- of the State and institutions in respect of transnational (non-governmental organizations) and international cooperation bodies, subject to respect for the cultural and political specificities of the country concerned. In view of the fundamental nature of this right and the fact that its realization is a common good that cannot be restricted by national frontiers, it is clear that in the case of the fundamental right to education, as in that of other fundamental rights, a State cannot legitimately oppose cooperation by invoking the reasons given above. It may be added that only a democratic State, namely, one that guarantees a public forum, is able to satisfy this condition.

(b) Minimum positive obligations (protection) also concern all suppliers who must imperatively contribute to the partnership necessary to create the intangible nucleus of the right to education (basic obligations), control by the State being a last resort, but before the public forum (discussion between all the actors concerned, both direct and indirect) (subject to the observation made above in paragraph 14);

(c) Action to prevent positive obligations (respect for the indivisibility of the system of freedoms) having negative effects. This type of obligation is frequently overlooked and consists of ensuring that the implementation, particularly of basic measures (compulsory schooling and literacy programmes, for example) is respectful of freedoms and, more generally, of all human rights. Here again the State does not itself possess the means necessary to do this and the situation must be monitored through discussions between all the actors concerned in a public forum;

(d) Positive obligations (full realization). These obligations may be described as "programmatic" since they depend on available resources - not only financial resources but also human and structural. They correspond to the infinite nature of the purpose of right (para. 11). This is not to say that this is no longer a right, for it is an aspect of the realization of the right potentially present in the nucleus. Yet it is clear that it is realized in stages, in proportion to the resources available (by available is meant not only those appropriated by the State but also all those that can rightfully be invested or mobilized for this purpose).

III. ITS INTANGIBLE NUCLEUS

19. Differences in the nature of the obligations referred to above make it possible to identify a number of legal obligations particularly in respect of

the intangible nucleus of this right and the threshold beyond which the purpose of the right is deprived of all substance and the dignity of the beneficiary is irremediably violated (see para. 11 above).

20. Quite apart from the framework necessary to ensure respect for this right (compulsory and free primary education - the legal obligation of employers to provide, either directly or indirectly a minimum amount of continuing education) corresponding to the common responsibility to create, maintain, adapt and develop training systems, we can identify the dimensions of the purpose of this right whose violation is of the same order as the worst possible violations, such as torture. The continuing personal and public humiliation experienced by millions of person because they are unable to assume their basic responsibilities for want of education constitutes a violation that nothing can justify. The concept of a "programmatic right" is no more admissible in respect of the right to education (or any human right) than torture.

21. Pending the availability of an accurate inventory which must be carried out as a matter of urgency and submitted for discussion, we may rapidly indicate:

(a) An ability to write (measures to combat illiteracy and functional illiteracy, including day-to-day means of communication);

(b) Familiarity with human rights and their immediate and proper application in places where training is provided. 7/ The realization of this right is an excellent indicator of the effectiveness of schooling: real instruction in freedoms, participation, discovery and respect for the universal;

(c) A minimum amount of exposure to other cultures, namely, initiation in two or more languages, in the light of local conditions, knowledge about the regional and national heritage and familiarization with the heritage of at least one foreign country; mutual familiarization with and immersion in the cultures of origin of partners;

(d) Discussion of knowledge and of the employability of the worker;

(e) Respect for traditional ways of transmitting knowledge if not at variance with the above.

IV. THE ECONOMIC LOGIC BEHIND THIS RIGHT AND THE COMPILATION OF INDICATORS

A. Investment

22. No researcher could endorse what is said by a State which affirms that this right is of a programmatic nature and can be realized only insofar as resources are available; this reasoning is not only untenable from the standpoint of indivisibility but also obviously contrary to economic logic. In point of fact what a State of that kind is saying is that the education of poor people is not its concern. Yet it is common knowledge that education

conceals a treasure, 8/ and that human resources (human capital, social capital and cultural capital) is of paramount importance in the development of individuals, enterprises, regions and countries.

23. For this reason it is not enough to say that the right to education is a long-term investment. It yields extremely large dividends, even in the short term, for the enterprise, health education and family education, in the medium term for primary, secondary and vocational training schools, and in the long term for university education (as well as in the short term in this case if existing forms of education are improved).

24. Consequently, the economic approach to human rights in general, cultural rights and the right to education in particular can no longer be reduced to a cost/benefit analysis. Economic logic implies a search for a balance between costs and benefits. The various benefits offered by education are innumerable - directly in terms of productivity at the level of the formal and informal sector and indirectly in terms of social capital, namely, the improvement of the social and political fabric, without which no development is sustainable, subject to respect for individual freedoms. Indicators reflecting investment approaches and their profitability can be compiled for this purpose.

B. Comprehensive analysis by the compilation of cultural human development indexes

25. It follows from what has been said above that a comprehensive set of indicators can be compiled and is indeed necessary to evaluate requirements, resource and results. The need for this comprehensive approach must be emphasized since no indicator by itself can offer a realistic picture of the situation.

26. The Fribourg Institute has embarked upon research into cultural development indexes, 9/ its purpose being to supplement, in respect of the cultural dimension of all human rights and specifically cultural rights, the human development index drawn up by UNDP. At this preliminary stage, some of the points that should be taken into account in developing and compiling these indicators may already be summarized:

(a) The first challenge is that presented by intercultural situations. A comprehensive analysis based on fundamental rights should make it possible to elaborate sets of alternative indicators in order to take into account the diversity of situations (countries with a uniform school system and countries or regions emphasizing traditional ways of disseminating knowledge, for example);

(b) The second challenge concerns quantification. Here again, comprehensive analysis can prevent the reduction of a qualitative statistic to a single set of quantitative data. The diversity of approaches should permit various quantifications and yet leave adequate room for qualitative indicators. 10/

27. The logical solution would be to cover as many indicators as possible. The analyses carried out indicate that at least the following types of indicators should be distinguished and associated: 11/

(a) Indicators of position or means reflecting the state of a system (what resources - monetary, human or infrastructural, for example - are available to education);

(b) Indicators of tension which reveal trends in a system: various factors of change and critical thresholds;

(c) Indicators of results or of output reflecting the performance of a system (how many graduates have been produced by the system of education and how many have found a socially approved job - whether remunerated or not);

(d) Indicators of perception showing how the persons concerned view the system.

28. An analysis of this kind implies the participation of several teams and a large number of partners who show respect for cultural diversity on the basis of an accurate and explicit enumeration of the disciplines and methodologies involved. Despite the difficulty of this important task, however, it can be embarked upon successfully, even if at the beginning extremely imperfect instruments have to be tried out. It would be illogical to work separately on indicators of the right to education since general difficulties and the need to take into account the indivisibility of rights in a concrete manner might well be overlooked. On the other hand, this right could be used as a priority area for research since it is the one in which statistical data are probably the most important.

V. PROPOSALS

29. Serious shortcomings are still apparent as regards cultural rights and indivisibility in general, at the present theoretical stage and more research has to be done if the anarchical development of norms and resources is to be avoided. The objective must be to reinforce indivisibility in order to understand the specific nature of each right as part of the whole and not to disperse efforts even further.

30. Cultural rights in general. Research into cultural rights, their definition and implementation, must be expanded as a matter of urgency in every possible way, such as through regional and international conferences, theoretical research and field programmes, with all the partners concerned, as well as by the adoption of normative texts supplementing existing instruments. 12/

31. Research is being done on the subject of basic obligations relating to the right to education, which should be given priority and discussed in association with UNESCO.

32. Research on indicators should be discussed by all the partners concerned, possibly at a small conference.

33. The right to be acquainted with human rights could be immediately defined in an appropriate legal manner, and possibly an article incorporated in the Protocol to the Covenant, for example; this would be compatible with the Decade. Similarly, the preparation of articles setting out the main dimensions of the right to education in the light of the intercultural context (respect for differences and appreciation of similarities and the universal) could be envisaged.

Notes

1/ The main results are available on our Internet site. Publications include: P. Meyer-Bisch, ed., Les droits culturels, une catégorie sous-développée de droits de l'homme, Fribourg, Editions Universitaires, 1993; P. Meyer-Bisch, ed., Culture of democracy: a challenge for schools, Paris, UNESCO Publishing, 1995 (available also in Spanish; the Arabic version is ready but not yet published). For this document see in particular November 1998, P. Meyer-Bisch, ed., Les droits culturels, projet de déclaration, Paris-Fribourg, UNESCO - Editions Universitaires (Spanish and English versions in preparation). The Arabic text of the Declaration has been published in the Arab Review for Human Rights, No. 5, January 1998, Tunis, Arab Institute of Human Rights. The Group is preparing a second volume of analyses. For links with minorities, the question of cultural communities and democracy, see also P. Meyer-Bisch, L'Etat de droit au service des identités culturelles in Revue internationale de politique comparée, Louvain, vol. I, 3, 1994, pp. 441-453; Nature of the right to cultural inheritance as a human right, in Inheritance European, No. 3-1995, pp. 28-31, Strasbourg, Council of Europe. English and German versions available; La notion de démocratisation au regard des droits culturels in Hermès, 19, Paris, Ed. du CNRS, 1996, pp. 241-264.

2/ The Working Paper submitted by Mustapha Mehedi to the Sub-Commission on Prevention of Discrimination and Protection of Minorities entitled "The realization of economic, social and cultural rights" (E/CN.4/Sub.2/1998/10) rightly emphasizes this point but remains within a too limited logical framework because of the usual schematic dualism between the two major categories of rights, namely, social and civil rights, since it disregards the fact that freedoms, at least, come under both headings and relativizes the distinction.

3/ A recent case in point is that of Alain Touraine (Pouvons-nous vivre ensemble? Paris, Fayard, 1997) who, in the chapter entitled "L'école du sujet" makes a very telling analysis of autonomization, although slightly at the expense of socialization, because schools have above all had the effect of integrating and assimilating and not sufficiently of liberating.

4/ Specifically, the incorporation of cultural capital.

5/ On the difficult but essential discussion of limits to legitimate restrictions and the intangible nucleus, see the commentaries on the draft declaration, paras. 22 to 25, and M. Borghi "Le noyau intangible des droits culturels", in De la Constitution, Bâle, Frankfurt-on-Maine, Helbing and Liechtenhahn, 1996.

6/ On the subject of cultural rights and the European Convention on Human Rights see the Yearbook of the European Convention on Human Rights (Eighth Symposium), 1995, The Hague/Boston/London, Nijhoff, and in particular the report of Emmanuel Decaux, "Cultural rights: universal, indivisible and legally enforceable individual rights", pp. 27-37, as well as the discussions.

7/ See Documents of the Copenhagen Meeting of the Conference on the Human Dimension of the Conference on Security and Cooperation in Europe. (10 and 11) which are very precise and deserve to be taken up by the United Nations.

8/ J. Delors, "Learning: the treasure within", Odile Jacob/UNESCO, Paris, 1996.

9/ The documents produced during the first stage of this work are available at our site. It goes without saying that in order to proceed to the next stage, we need theoreticians, premises and financing.

10/ See Xavier Dupuis, in UNESCO, The cultural dimension of development, Paris, 1995.

11/ A good summary of the general problem is to be found in UNESCO, L'approche culturelle du développement. Manuel de planification: principes et instruments, Paris, June 1997 (World Decade for Cultural Development CLT/DEC/CD).

12/ Thus following up the conclusions of the Perez de Cuellar report, Our creative diversity, Paris, UNESCO, 1997.